

DJF:TSJ:may

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

BENJAMIN ELLIS FREEDLAND,	:	NO. 1:20-CV-81
Plaintiff	:	
	:	
v.	:	(Kane J.)
	:	
BETH MATTINGLY, et al.	:	
Defendants	:	(Electronically Filed)

**BRIEF IN SUPPORT OF DEFENDANTS’
MOTION FOR LEAVE TO FILE A BRIEF IN EXCESS OF FIFTEEN
PAGES AND 5,000 WORDS**

Defendants Mattingly and Jenkins, respectfully submit this brief in support of their motion to exceed the fifteen page, 5,000 word limit as provided in M.D. Pa. Local Rule 7.8 in filing the brief in support of their Motion to Dismiss.

I. Procedural History

Plaintiff Benjamin Ellis Freedland is an inmate formerly incarcerated at the Allenwood Federal Correctional Institution in White Deer, Pennsylvania (FCI Allenwood). On January 16, 2020, Freedland initiated this action seeking monetary and injunctive relief pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), against the following Bureau of

Prisons (BOP) employees: Defendant Beth Mattingly, Christopher Angelini¹ and Warden Wiley Jenkins² previously identified as “Defendant FNU LNU.” (See Compl. (Doc. 1).) Freedland alleges that while incarcerated at FCI Allenwood, Defendant Mattingly sexually harassed him and then sexually abused him and retaliated against him when he reported the harassment. (Id.) Freedland further alleges that Defendants Angelini and Jenkins failed to protect him from the abuse. (Id. at 3-14.)

On June 21, 2020, Freedland filed a notice of appeal (Doc. 59) of the Court’s Order of June 15, 2020 (Doc. 55) denying his “motion requesting [C]ourt show cause why [D]efendants should not be held in contempt” (Doc. 34). According the Court stayed the instant case on July 17, 2020, pending resolution of the appeal. (Doc. 66.) On August 10, 2020, the Third Circuit dismissed the appeal pursuant to Rule 42(b)

¹ Christopher Angelini is retired from the BOP. He has not been served with the complaint and no waiver has been filed with this Court. (See generally Docket; Doc. 19.) He has not requested representation by the Department of Justice. Moreover, the complaint was filed on January 16, 2020. (Doc. 1.)

² Defendant Wiley Jenkins was identified by Plaintiff through a F.O.I.A. request. (Doc. 26.) Wiley Jenkins was the Associate Warden at FCI Allenwood and also the PREA Compliance Manager. (Id.) The Court Order that Wiley Jenkins be substituted for Defendant FNU LNU on the docket and in the caption, and the service packet was mailed to him. (Doc. 38 at 3, ¶ 3.) Wiley Jenkins filed his waiver of service on May 26, 2020. (Doc. 48.)

of the Federal Rules of Appellate Procedure. (Doc. 73.) Subsequently, the stay was lifted on August 11, 2020, and the Court issued an Order directing Defendants to file an answer or response to the complaint within thirty (30) days. (Doc. 74.) On September 10, 2020, Defendants Mattingly and Jenkins filed a motion to dismiss the complaint. (Doc. 77.)

Defendant Angelini has not been served with the summons as he has retired from the Bureau of Prisons (BOP) in 2018, as stated on his unexecuted summons which was returned to the Court on March 11, 2020. (Doc. 19, see generally Docket.) Defendants confirmed the lack of service on Angelini in their motion for extension of time filed on July 17, 2020. (Doc. 65.) On August 5, 2020, Plaintiff filed a “motion requesting clarification of responsibility to effect service on Defendant Angeline and/or an enlargement of time to effect service,” which was granted and explained his responsibility regarding service, and stated that if Angelini did not enter an appearance within thirty (30) days the Court would address the issue. (Docs. 72, 74.)

On September 10, 2020, the Court issued an Order directing plaintiff to show cause as to why Defendant Angelini should not be dismissed pursuant to Rule 4(m). (Doc. 78.) Plaintiff has not yet served Defendant Angelini and no entry of appearance has been filed. (See generally Docket.)

On September 10, 2020, a Motion to Dismiss was filed on behalf of the Defendants, Beth Mattingly and Wiley Jenkins. (Doc. 77.) Defendants' Brief in Support of the Motion to Dismiss is due on September 24, 2020.

On September 30, 2020, Defendants filed a Motion to Exceed the page and word limit as provided in M.D. Pa. Local Rule 7.8. This brief is filed in support of the motion by Defendants to be granted leave to exceed the local rules regarding page and word limitations for briefs.

II. Question Presented

Whether this Court should grant Defendants' motion to file a brief that exceeds the fifteen page limitation for filing?

III. Argument

Defendants will be filing a brief in support of their dispositive motion which includes a lengthy procedural history, factual background and various arguments to address each the Bivens claims against Defendant Mattingly and Jenkins as alleged in Freedland's complaint. In order to demonstrate all of the defenses to Freedland's claims and the underlying facts relevant to the claims, it is necessary for Defendants to exceed the fifteen page, 5,000 word limit of the local rules of this Court, and submit a brief with no more than 35 pages, exclusive of the caption, tables, and signature block. Freedland will not be prejudiced in granting this Motion, as it

should assist him in understanding all of Defendants' defenses and present the same in a thorough manner to the Court.

IV. Conclusion

For the reasons stated above, Defendants request that this Court grant their motion to exceed the fifteen (15) page/5,000 word limit.

Respectfully submitted,

DAVID J. FREED
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/s Timothy Judge
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Date: September 30, 2020

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CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers. That on September 30, 2020, she served a copy of the attached

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by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Scranton, Pennsylvania.

Addressee:
Benjamin Freedland
Reg. No. 72119-066
USP Yazoo
P.O. Box 5000
Yazoo City, MS 39194

/s/ Maureen Yeager
Maureen Yeager
Paralegal Specialist